

STATE OF MICHIGAN
COURT OF APPEALS

In re A. V. DELEON, Minor.

UNPUBLISHED
December 15, 2015

No. 327718
Ingham Circuit Court
Family Division
LC No. 14-000891-NA

Before: JANSEN, P.J., and CAVANAGH and GLEICHER, JJ.

PER CURIAM.

Respondent-appellant mother (“respondent”) appeals as of right from the trial court’s order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), (c)(ii) (other conditions exist), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood of harm). For the reasons set forth below, we affirm.

I. FACTS

The trial court entered an ex parte order removing the child from respondent’s care and placing the child in protective custody after respondent assaulted her boyfriend with scissors in the child’s presence and fled the scene of the incident without making care and custody arrangements for the child. Respondent admitted to having a history of “assaultive behaviors [that] continue to jeopardize the safety of” the child. The record is clear that throughout the proceedings respondent’s compliance with her case-service plan was minimal at best. The record is replete with missed parenting time, missed drug screens, and poor attendance at domestic-violence classes over a period of approximately eight months following the dispositional hearing. Indeed, the court found respondent in contempt of court for failing to comply with her case-service plan. There is also evidence that the child experienced anxiety attacks in respondent’s presence, for which the child received therapy. A therapist working with the child testified that she diagnosed the child with an adjustment disorder and posttraumatic stress disorder. The therapist also testified that there are “really significant delays in [the child’s] speech.” “In my clinical opinion, based on what I have heard about her experiences while she was in the care of her mother,” the therapist testified, “it sounds like that witnessing domestic violence, her mother’s anger, and what she may have witnessed there and potential neglect, being left alone, not being cared for, being very frightened would have led her to have these symptoms.” Recognizing that respondent had made some progress in the approximate two

months before termination, the court nonetheless concluded that “the child cannot wait any longer for her to accomplish that.” The court terminated respondent’s parental rights.

II. STATUTORY GROUNDS AND BEST INTERESTS

Respondent’s sole argument on appeal is that the trial court prematurely terminated her parental rights. We disagree.

A trial court’s findings of fact on the statutory grounds for termination are reviewed for clear error. MCR 3.977(K); *In re White*, 303 Mich App 701, 709; 846 NW2d 61 (2014). “The trial court’s factual findings are clearly erroneous if the evidence supports them, but we are definitely and firmly convinced that it made a mistake.” *Id.* at 709-710. “When reviewing the trial court’s findings of fact, this Court accords deference to the special opportunity of the trial court to judge the credibility of the witnesses.” *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005).

“[I]t is well established that the petitioner for the termination of parental rights bears the burden of proving at least one ground for termination.” *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000), abrogated in part by statute on other grounds as stated in *In re Moss*, 301 Mich App 76; 836 NW2d 182 (2013). “The existence of a statutory ground for termination of parental rights must be proven by clear and convincing evidence.” *In re LE*, 278 Mich App 1, 22; 747 NW2d 883 (2008). Only one statutory ground need be proven. *In re Trejo*, 462 Mich at 350.

In this case, the trial court relied on the following statutory grounds in terminating respondent’s parental rights:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

(ii) Other conditions exist that cause the child to come within the court’s jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be

able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent. [MCL 712A.19b(3)(c)(i) and (ii), (g), and (j).]

A. MCL 712A.19b(3)(c)(i)

“This statutory ground exists when the conditions that brought the [child] into foster care continue to exist despite ‘time to make changes and the opportunity to take advantage of a variety of services’ ” *In re White*, 303 Mich App at 710, quoting *In re Powers*, 244 Mich App 111, 119; 624 NW2d 472 (2000). “While [petitioner] has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered.” *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). A respondent must “demonstrate sufficient compliance with or benefit from those services.” *Id.*

In this case, more than 182 days elapsed since the issuance of the initial dispositional order. The conditions that led to the adjudication involved respondent's “assaultive behavior” in the presence of the child. Evidence was presented that she failed to complete her domestic-violence classes, the classes that are most applicable to the primary allegation in the original petition. As stated above, a parent's failure to both participate in and benefit from services that are provided supports termination of his or her parental rights under this ground. See *In re Frey*, 297 Mich App at 248. While the record supports respondent's contention that she began participating in services in March 2015, it also supports the trial court's conclusion that “the child cannot wait any longer for” respondent to make the necessary improvements in her life to be her parent. It took respondent nearly the entire time this case was pending for her to participate in services, and there is no indication that respondent would have rectified her assaultive behavior within a reasonable time considering the child's young age. Therefore, the trial court did not clearly err in concluding that MCL 712A.19b(3)(c)(i) was proven by clear and convincing evidence. See MCL 712A.19b(3)(c)(i).

B. MCL 712A.19b(3)(c)(ii)

MCL 712A.19b(3)(c)(ii) provides that termination is proper if there is clear and convincing evidence that

[o]ther conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

In this case, the evidence presented at the termination hearing supported the trial court's finding that other conditions existed that caused the child to come within the court's jurisdiction. Respondent's case-service plan included drug screens and obtaining adequate housing. Respondent failed to submit to all of her drug screens, and a drug screen from March 2015 was positive for cocaine. Respondent also failed to obtain appropriate housing. Respondent's drug use and lack of housing are conditions that would cause the child to come within the court's jurisdiction. See MCL 712A.2(b)(1). In addition, respondent was given recommendations to rectify the conditions in her case-service plan and a reasonable opportunity to rectify the conditions after notice and a hearing. See MCL 712A.19b(3)(c)(ii). Respondent failed to rectify the conditions, and there was no indication that she would do so within a reasonable time considering the child's young age since respondent failed to obtain adequate housing and had a positive drug screen two months before the termination hearing. See *id.* Therefore, the trial court did not err in terminating her parental rights under this statutory ground.

C. MCL 712A.19b(3)(g)

Termination is appropriate pursuant to MCL 712A.19b(3)(g) where "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." Slow progress in services and an inability to obtain and maintain suitable housing is sufficient evidence to satisfy this statutory ground. See *In re Trejo*, 462 Mich at 362-363.

In this case, respondent, after being offered eight months of intensive services, remains unable to provide proper care or custody for the child at issue. Respondent increased her efforts to comply with her case-service plan in the two months preceding termination, but the record is clear that she made very little progress before that date and was inconsistent with progress thereafter. Indeed, after a March 2015 hearing, respondent failed to participate in a substance-abuse assessment, missed a substantial amount of drug screens, tested positive for cocaine at a drug screen, "was discharged for non-compliance" from her domestic-violence therapy group, and failed to show she obtained appropriate housing. Notably, she was also incarcerated three times while this case was pending.

Further, there is nothing in the record to suggest that respondent's recent participation in services will enable her to provide proper care and custody to the child within a reasonable time given the child's age. Although respondent began to participate in services, she failed to fully participate in services and had one positive drug screen less than two months before the termination hearing. The child has been in foster care for more than half of her life. Several witnesses, including a therapist who testified as an expert regarding young children who experience trauma, recommended the child remain with her foster family because of her need for permanence, stability, and finality. Considering the child's young age, coupled with the physical manifestations of anxiety that occurred primarily when parenting time with respondent was taking place, the record supports a conclusion that the child's age does not permit allowing more time for respondent to improve. Therefore, the trial court did not clearly err in concluding that MCL 712A.19b(3)(g) was proven by clear and convincing evidence. See MCL 712A.19b(3)(g).

D. MCL 712A.19b(3)(j)

Termination is appropriate pursuant to MCL 712A.19b(3)(j) when “[t]here is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.” It is unclear where respondent resided at the time of the termination hearing. Furthermore, respondent failed to successfully complete her court-ordered domestic-violence classes, which address the primary issue in this case. Without completing those classes, as well as counseling, there is little to suggest that respondent addressed the anger-management problems that resulted in the removal of the child and of respondent’s arrest. Respondent had one positive drug screen two months before the hearing, and she failed to fully comply with her scheduled drug screens. This evidence demonstrates that there was a reasonable likelihood of harm to the child if she was returned to respondent’s care. Therefore, the trial court did not clearly err in concluding that MCL 712A.19b(3)(j) was proven by clear and convincing evidence. See MCL 712A.19b(3)(j).

E. BEST INTERESTS

Additionally, the record supports the trial court’s conclusion that termination was in the child’s best interests. “The trial court must order the parent’s rights terminated if [the petitioner] has established a statutory ground for termination by clear and convincing evidence and it finds from a preponderance of the evidence on the whole record that termination is in the [child’s] best interests.” *In re White*, 303 Mich App at 713. We review the trial court’s best-interest determination for clear error. *Id.* In making the best-interest determination, the trial court should consider all available evidence and a wide variety of factors, including the bond between the parent and the child, the parent’s ability to parent the child, the child’s need for permanency and stability, the advantages of a foster home over the parent’s home, the parent’s compliance with the case-service plan, the parent’s parenting-time history with the child, the child’s well-being, and the possibility of adoption. *Id.* at 713-714.

Here, there was evidence that the child has a close bond with her foster parents and that respondent and the child do not share a bond. During the minimal time that they spent together, the child presented physical manifestations of anxiety, and expert testimony attributed that to respondent’s past assaultive behaviors. Once placed in her current foster home, however, the child demonstrated significant improvement. There was testimony from the child’s therapist that the child needed stability and permanency and that continued placement with the foster family would allow the child to achieve permanency and stability. As discussed above, respondent failed to comply with her case-service plan and lacked the ability to properly care for the child. Thus, the testimony presented at trial strongly supported the trial court’s conclusion that termination was in the child’s best interests. See *In re White*, 303 Mich App at 713-714.

Accordingly, we conclude that the trial court's decision to terminate respondent's parental rights was not clearly erroneous.

Affirmed.

/s/ Kathleen Jansen
/s/ Mark J. Cavanagh
/s/ Elizabeth L. Gleicher